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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Petition for Rulemaking to Reclassify
AT&T as Having Dominant Carrier Status

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RM - 9006

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SUPPLEMENT TO PETITION FOR RECONSIDERATION

Total Telecommunications Services, Inc.

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SUPPLEMENT TO PETITION FOR RECONSIDERATION

Total Telecommunications Services, Inc. ("TTS") respectfully submits this filing to supplement its January 30, 1997 filing¹ in support of the December 31, 1996 request of United Homeowners Association ("UHA") and United Seniors Health Cooperative ("USHC") for the Federal Communications Commission ("FCC" or "Commission") to reconsider its decision to reclassify AT&T Corp. ("AT&T") as a non-dominant carrier of long distance telephone service.²

AT&T is engaged in predatory, discriminatory and anticompetitive practices that warrant a finding by the Commission that AT&T is using its market power to crush competitors, and, therefore, AT&T should be reclassified as a dominant carrier.

¹ TTS filed a Petition for Reconsideration of the Commission's Order reclassifying AT&T as non-dominant on January 26, 1996; however, the Commission has not yet ruled in the proceeding.

² Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier, *Order*, FCC 95-427, (October 23, 1995) (hereinafter "*Reclassification Order*").

BACKGROUND

As TTS stated in its January 30, 1997 filing, AT&T has used its market position to unlawfully cut off its own customers' access to TTS and to TTS' end-user, Audiobridge of Oklahoma, Inc. ("Audiobridge").³ AT&T discontinued service to TTS on the very day that the Commission's order reclassifying AT&T as a non-dominant carrier became effective -- November 22, 1995. Initially, TTS filed suit in the U.S. District Court for the District of Columbia, which referred the case to the Commission under the doctrine of primary jurisdiction.⁴ TTS has since filed a Formal Complaint against AT&T with regard to AT&T's unlawful practices.⁵

The volume of calls between AT&T's customers and TTS' end-user, Audiobridge, was significant -- approximately ten million minutes of billable telephone calls between August 1, 1995 and November 22, 1995. Although AT&T has refused to pay TTS what it owes for the calls, AT&T apparently has billed and collected from its customers. It is simply amazing that in an era of competition where call volumes and operating revenues are paramount, AT&T would dare to block its customers from making calls they desire to place.

Since TTS filed its Petition for Reconsideration in this proceeding, new information

³ Audiobridge provides a multiple voice bridging service ("MVBS") which allows members of the public to engage in conversations individually or in groups with other members of the public. MVBS does not offer the caller any information or entertainment services of any kind; it simply interconnects (or bridges together) those people who wish to talk among themselves. TTS switches incoming interstate long distance calls to the various MVBS telephone numbers assigned to Audiobridge.

⁴ *Total Telecommunications Services, Inc., et. al. v. American Telephone & Telegraph Company*, Civil Action No. 95CV02273 (RMU).

⁵ *Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., v. AT&T Corp.* FCC File No. E-97-03.

regarding AT&T's involvement in the provision of chat line services has come to light. On March 25, 1997, Beehive Telephone Company, Inc. and Beehive Telephone, Inc. Nevada (collectively "Beehive") filed a cross complaint against AT&T.⁶ In its cross complaint, Beehive alleged that AT&T concealed material facts during the case's complaint proceeding. Specifically, Beehive stated:

Upon information and belief, AT&T entered into a Terminating Switch Access Arrangement ("TSAA") agreement in April 1994 with HFT, Incorporated ("HFT"), which operated an adult "chat line" using telephone numbers in Utah. HFT understands that AT&T entered into the TSAA because it would generate additional interexchange revenues for AT&T...

Cross Complaint, at 3. Beehive continued:

Upon information and belief, AT&T has entered into an arrangement with a provider of adult chat services [in Reno, Nevada] pursuant to which AT&T pays the chat services provider a portion of the revenues AT&T receives from calls to the Reno chat line [provider].

Id. at 9. Finally, Beehive stated:

AT&T has entered into a revenue sharing agreement with the Reno chat line provider that is similar to Beehive's arrangement with [its chat line provider].

The material fact that AT&T remits a portion of its revenues to the Reno chat line provider should have been disclosed in reply to Beehive's affirmative defense under the doctrine of unclean hands.

Accordingly by failing to disclose its arrangement with the Reno chat line provider in its Reply, AT&T made a willful material omission in violation of 47 C.F.R. § 1.17.

Id. at 11.

⁶ *AT&T Corp. v. Beehive Telephone Company, Inc.*, FCC File No. E-97-04.

AT&T failed to disclose that it had entered into the same type of arrangements that it accused Beehive of entering into, and, in fact, competes with Beehive as well Audiobridge in the provision of voice bridging services. Foreclosing access to competitors' services is indicative of AT&T's predatory and anticompetitive business practices.

AT&T IS ATTEMPTING TO DESTROY COMPETITION

By foreclosing its own customers' access to TTS and Audiobridge, AT&T is essentially telling its customers that if they want to interact with other people over a voice-bridging type of service, they must use AT&T's MVBS service because AT&T will not permit its customers to access a competitors service over AT&T's system.⁷ According to AT&T, by denying its customers access to TTS and Audiobridge (a competitor in the provision of MVBS) it not "violat[ing] Section 202(a)'s prohibition on unreasonable discrimination in the provision of 'like services'. . . [it is making a] reasonable business decision."⁸

The Commission's *Reclassification Order* states:

Like other non-dominant carriers, AT&T will still be subject to regulation under Title II of the Act. Specifically, non-dominant carriers are required to offer interstate services under rates, terms and conditions that are just, reasonable and **not unduly discriminatory** (Section 201-202). . . and to give notice prior to discontinuance, reduction or impairment of service.⁹

AT&T may believe that its decision to put competitors out of business is reasonable;

⁷ TTS argues that neither it nor Audiobridge are providing a chat line service, however if, assuming *arguendo*, the Commission were to find that Audiobridge was providing a chat line service, the Commission must also find that AT&T is providing a chat line service.

⁸ Motion of AT&T Corp. to Dismiss or for Judgment on the Pleadings, File No. E-97-03, at page 11 (Dec. 24, 1996) ("*AT&T Motion*").

⁹ *AT&T Reclassification Order* at para. 13 (emphasis added) (footnote omitted).

however, TTS finds it to be anticompetitive and in direct contravention to the Commission's decision to reclassify AT&T as nondominant.

CONCLUSION

TTS' experiences with AT&T show that AT&T still has dominant market power, and is not afraid to use it to foreclose competition. In order to protect consumers from AT&T's anticompetitive and predatory behavior, TTS respectfully requests the Commission reconsider its decision to reclassify AT&T as nondominant.

Respectfully submitted,

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CERTIFICATE OF SERVICE

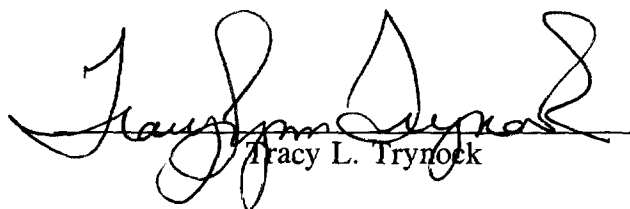
I, Tracy L. Trynock, hereby certify that on this 15th day of April, 1997, copies of the foregoing "Supplement To Petition For Reconsideration" have been served by Hand Delivery or Priority Overnight Federal Express, upon the following:

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